

short of remarkable. An examination of the wastewater system reveals widespread problems and a history of chronic noncompliance with the requirements and directives of the Illinois Environmental Protection Agency ("IEPA"). These problems range from an inability to properly treat wastewater before dumping it into the river (or, for that matter, to provide any treatment at all), to inadequately addressing the issue of a suspected sewer overflow that the IEPA first brought to the City's attention almost ten years ago. The City's problems with its wastewater system raise significant doubt about the City's ability to properly operate the Pekin District water system. Second, the fact that the City would willingly point to its operation of the wastewater system in its testimony in this matter indicates that the City is either wholly ignorant of the magnitude of problems facing the wastewater system or finds such problems acceptable. Whichever is true, the trustworthiness of the City is called into question if it is willing to make bold assertions concerning the "outstanding" nature of its wastewater system when reality shows that the wastewater system is a chronic violator of environmental laws, regulations and IEPA directives.

The City's problems with its wastewater system were addressed by IAWC's expert witness, Yvonne Ciccone. The City either could not or chose not to address these problems at the hearing, as the City waived its right to cross-examine Ms. Ciccone. In her direct testimony [IAWC Ex. 8.0], Ms. Ciccone discussed in great detail the operational breakdowns within wastewater treatment plant 1 ("WTP 1"), suspected squandering of funds by the premature shut down of treatment plant 2 ("WTP 2"), and the City's chronic and ongoing general inability to comply with all applicable IEPA regulations. While each of these problems directly hinders the ability of

the wastewater treatment system to adequately collect and treat wastewater, one of the more disturbing issues that was uncovered by Ms. Ciccone is the City's continued inability or unwillingness to locate a suspected sanitary sewer overflow ("SSO") identified years ago by IEPA.

This SSO could potentially be dumping thousands of gallons of raw sewage directly into the river. [IAWC Ex. 8.0R, p. 6.] Unfortunately, this is not a recent problem, as the IEPA has repeatedly warned the City about this problem for almost ten years. In 1996, the IEPA issued a report to the City stating that the SSO has been suspected "for the past few years." [IAWC Ex. 8.0, p. 20; IAWC Ex. 8.0R, p. 6.] In 1998, yet another report was issued by the IEPA stating that "it was apparent that sewage was being lost from somewhere along the interceptor." [IAWC Ex. 8.0, p. 20; IAWC Ex. 8.0R, p. 6.] The City's failure to locate and eliminate this SSO is even listed as a deficiency on the IEPA's CEI O&M report of 1998. [IAWC Ex. 8.0, p. 20; IAWC Ex. 8.0R, p. 6.] Despite this high level of concern on behalf of the IEPA, the City has never taken the necessary steps to determine the location of the SSO. The City is purportedly attempting to find a company to find and fix the SSO, but, even with the passage of ten years, it still had not occurred as of the hearing. [Pekin Ex. 6.0, p. 5; Tr. 278.]

The City's unwillingness to aggressively pursue and locate the SSO is indicative of the low standards to which the City holds its wastewater system. Mr. Kief made it clear that the City is concerned with certain environmental issues only if those issues are the direct cause of an excursion to the plant's NPDES permit. [Pekin Exs. 2.0, p. 9; 6.0, p.5; Tr. 293-94.] But even then the City does not strive for full compliance. For example, Mr. Kief stated at trial that he would be happy with four or five excursions at

the wastewater treatment plant each year. [Tr. 307.] When questioned about the numerous wastewater system excursions during the last three years, Mr. Kief retracted the statement he made in his direct testimony that the City “is in compliance with US and Illinois EPA regulations.” [Pekin Ex. 2.0, p. 9.] Instead of full compliance, Mr. Kief stated at trial that what he actually meant is that they were “generally in compliance.” [Tr. 260.] As testified to by Terry Gloriod, the President of IAWC, such low standards are not acceptable to IAWC. As Mr. Gloriod stated, almost in compliance with mandatory state and federal regulations is insufficient when it comes to providing safe drinking water. [Tr. 731.] As an example of IAWC’s high standards, as testified to by Mark Johnson, the Vice President of Engineering of IAWC, when Illinois-American discovered that there was contamination in the aquifer where Wells 1 and 3 are located, although IAWC had not yet pinpointed the source of that underground contamination, Illinois-American proactively took action to solve the problem. [Tr. 968-969.] IAWC proactively took action to protect the health and well being of its customers prior to exceeding any regulatory limit. [Id.]

The City’s expert, Dr. Carl Adams, was not only incapable of addressing the issues raised by Ms. Ciccone, but his lack of preparation and the presence of numerous inaccuracies in his testimony further damages the City’s credibility in this case. The very premise of Dr. Adams’ testimony, that the City can manage and operate the Pekin District system due to its experience with the wastewater system, is faulty as Dr. Adams has virtually no experience whatsoever with water systems. According to Dr. Adams, his background is in wastewater and he does not consider himself an expert on the subject of drinking water regulations. [Tr. 559-60.] This admitted lack of experience,

however, did not stop Dr. Adams from testifying at length with regard to the Pekin District water system. [Pekin Ex. 12.0, pp. 13-19.] As Dr. Adams admitted at hearing, his lack of knowledge concerning water systems prompted him to rely on the views of two other individuals, Robin Garibay and Sam Shelby not called as witnesses – a fact not disclosed to the Commission in Dr. Adams' filed testimony. [Tr. 570.]

In fact, the City's "expert" never inspected the Pekin District water system, and when asked about the water system, it was obvious that he had only a limited familiarity. [Tr. 571.] Dr. Adams was unsure of the location and identity of Pekin's seven wells and incorrectly believed that the Pekin District system presently treats water for nitrates with ion exchange equipment. [Tr. 565.] Dr. Adams has never seen any documents detailing the mechanics and workings of that water system. [Tr. 571.] His testimony that the Pekin District system is not a "complex system" was conveniently founded solely on his belief that, in general, ground water systems are simpler than surface water systems. [Tr. 571.] As explained by IAWC witness Johnson, the operation of the Pekin District is actually quite involved given the continuous maintenance and adjustments (including continual calibration and program updates) necessary for proper operation of the Supervisory Control and Data Acquisition ("SCADA") system by highly skilled and trained facility operators, and given the tetrachlorethylene ("PCE") and nitrate pollution of the aquifer serving Pekin necessitating a complex Granular Activated Carbon ("GAC") facility that also requires constant monitoring. [IAWC Ex. 3.00, pp. 19-20.] Since Dr. Adams had neither the background nor the preparation to give an opinion on the Pekin District system, not only should his testimony on that subject be disregarded as the bought opinion of a "hired gun," it also casts doubt on the veracity of

his wastewater opinion — as the testimony makes clear that his threshold of information necessary to set forth an opinion is extraordinarily low.

Dr. Adams' testimony concerning the wastewater system is extremely limited in scope. According to Dr. Adams, the wastewater facility is "exemplary" and "well operated," and the City of Pekin "is doing an excellent job of managing the [Pekin wastewater facility]." [Tr. 573-74.] It is interesting to note, however, that Dr. Adams' testimony does not address the entire wastewater "system." Instead, Dr. Adams specifically limits his testimony to one small portion of Pekin's wastewater system, namely WTP 1. [Tr. 572.] By giving an opinion based upon this narrow slice of the wastewater system, he conveniently avoids providing an explanation for the City's failure to adequately handle the suspected SSO and ignores the fact that the City's wastewater system as a whole has been cited by the IEPA for over 15 violations in the three years prior to the hearing. [Tr. 657.] In their filed testimonies, Mr. Kief and Mr. Hierstein's statements praising the City's wastewater system concerned the system as a whole, so the limitation on the scope of Dr. Adams' testimony to WTP 1 speaks volumes for the City's inability to substantiate its position.

Furthermore, Dr. Adams' testimony concerning WTP 1 is replete with error and misstatement. Dr. Adams, for example, stated initially that dissolved oxygen ("DO") concentration in the activated sludge process of the wastewater treatment plant is "only a concern when . . . consistently and persistently below 1.0 mg/L." [Pekin Ex. 9.0, p. 30.] At the hearing, however, Dr. Adams admitted that IAWC was correct in its assertion that, in fact, the DO concentrations had dropped below 1.0 mg/L for a period of more than one day a total of 67 times over the past 3 years — but said that he had not

been aware of that fact because his review of documents in this case did not go into that level of detail. [Tr. 625-26.] Dr. Adams also stated in his filed testimony that during the last three years the Pekin wastewater treatment plant had not experienced a loss of biomass from the secondary clarifiers. [Pekin Ex. 9.0, p. 31.] When faced with wastewater system documents evidencing numerous losses of biomass within the last three years, Dr. Adams once again admitted that his filed testimony was incorrect and that there have been several occasions where a loss of biomass occurred. [Tr. 633-35.]

The inaccuracies in Dr. Adams' testimony are not limited to mischaracterizations of the way in which the City operates WTP 1. Aside from the failure to identify other individuals that he relied upon as discussed above, Dr. Adams blatantly attempted to conceal the fact that he did not personally conduct two inspections of the wastewater treatment plant. Despite specifically stating in a data request that he inspected the wastewater treatment plant on March 19-20, Dr. Adams admitted while on the stand that he had actually sent another individual to do the inspection. [IAWC Cross-Exam Ex. 30; Tr. 552.] Thus, not only was the response to the data request [IAWC Cross Ex. 30] incorrect, Dr. Adams revealed yet another individual upon whom he relied but never identified. [Tr. 639.] Furthermore, the same data request states that there were no discharges from any of the City's combined sewer overflows ("CSO") during the March 19-20 inspection. [IAWC Cross-Exam. Ex. 30.] Once again, this is an incorrect statement, as the operator's logbooks for that time period indicate that there was a discharge from a CSO for 8.4 hours. [Tr. 645.] Based upon the number of misstatements and outright falsifications in Dr. Adams' testimony, the only possible conclusion is that the City and Dr. Adams either intentionally submitted false testimony

or were careless in allowing the testimony to be filed with so many inaccuracies. This serves to totally nullify the City's argument that its history with the wastewater system indicates it can competently manage and operate the Pekin District water system. What the City relies on as the "solid basis" for its Petition in this case provides no support at all for the City's position, and in fact shows clearly that the Petition should be denied.

**3. Pekin Has Not Demonstrated that It Can Provide Better Service Under City Ownership.**

The City claims that it can provide better service than IAWC. [Hierstein Aff. to Pet., ¶¶ 15, 17, 19, 21-26; Pekin Ex. 1.0, pp. 12-13.] The City's argument on this issue is twofold. First, the City criticizes the service provided by IAWC. Second, the City asserts that the alleged problems with IAWC service would be rectified by City ownership. As discussed more thoroughly below, the City's criticisms of IAWC's service are completely unfounded and were apparently developed for purposes of the City's testimony in this proceeding. In addition, the City has provided no basis to believe that City ownership would improve water service within the Pekin District. In fact, the evidence presented shows that the quality of service would likely decline under City ownership. As such, Pekin's claim that it can provide better service than IAWC does not support its argument that the public interest would be better served under City ownership.

The City's criticisms in this proceeding of IAWC's service are suspect. In response to a 2001 performance survey, City Manager Hierstein, Mayor Tebben and Fire Chief Janssen all indicated that they were very satisfied with IAWC and the service it provides to the Pekin District in virtually every area, including responsiveness, reliability, water quality, accountability, and coordination with the City. [IAWC Ex. 5.0,

pp. 3, 12-13; Exs. 5.1, 5.7, 5.8.] Mr. Hierstein admitted that the City placed the acquisition issue before the voters a second time in 2002, not because of service issues or complaints, but because of the proposed stock transfer of IAWC's parent corporation to a foreign company. [Pekin Ex. 1.0, p. 8.] The City's Water Study Task Force report specifically found that examples of less than perfect service by IAWC are "the exception rather than the rule, as Illinois-American appears to be serious in maintaining high customer satisfaction." [Tr. 173-74.] On cross-examination, Mr. Hierstein admitted that the City has no major service issues with IAWC, and in fact, he could think of no reason why the City would not want IAWC to run the City's water system as a contract operator. [Tr. 173-74, 199.] Indeed, the City recently signed a contract with Illinois-American under which Illinois-American handles billing for the City's wastewater system. [IAWC Exs. 5.0, p. 12; 5.6.] It seems unlikely that the City would expand its relationship with Illinois-American in this manner if it was truly dissatisfied. The City has never filed a complaint with the Commission about the service issues referenced by its witnesses, and has no letter, memorandum, note, correspondence or any other written document that mentions any such issues. [IAWC Ex. 2.0R, p. 10.] Thus, the concerns the City now expresses over the service provided by IAWC exist only for purposes of the City's testimony in this case.

As the record shows, each of the City's criticisms of IAWC's service are unfounded. Staff witness Johnson specifically found that IAWC is a "very professional and customer friendly utility" with facilities that are "top-quality and well-maintained," and "high quality water that meets or exceeds regulatory standards." [ICC Staff Ex. 1.0, p. 3.] As confirmed by IAWC witness Stack, for three recent years, the Commission did



not receive any complaints at all from customers of the Pekin District. [IAWC Ex. 11.0R, p. 8.] In fact, IAWC's record of customer complaints has been the best of any regulated utility in Illinois. [IAWC Ex. 2.0, p. 5.] The evidence presented in this proceeding clearly demonstrates that IAWC has a proven record of outstanding service in Pekin. The City's unfounded criticisms of IAWC are further discussed below.

**a. The Evidence Clearly Demonstrates that IAWC Has Addressed the Issue of Small Diameter Mains In the Pekin District System.**

The City criticizes IAWC's rate of replacement of what the City contends is an excessive amount of water mains in the Pekin system that are 2 inches in diameter or less. The City contends these small diameter mains provide inadequate pressure and represent a fire safety hazard. [Pekin Exs. 1.0, p. 13; 2.0, p. 3; 4.0, p. 5.] As discussed more thoroughly below, the City's criticisms are baseless.

The Pekin District system dates back to 1886. [IAWC Ex. 3.0, p. 10.] As with most systems of that age, the Pekin system does have small diameter water mains, which IAWC defines as mains with a diameter of 4 inches or less. [Id.] The installation of small diameter water mains continued to increase up until IAWC acquired the system in 1982. Immediately upon acquisition of the system, IAWC began replacement of small diameter mains. [Id.] Since acquisition of the system, IAWC has replaced approximately 24,000 feet of small diameter mains, which represents an 11% reduction. [Id.]

In 2001, IAWC established a task force to develop a more formalized method of prioritizing small water main replacement. [IAWC Ex. 3.0, p. 10.] The task force developed a prioritization model to determine which small diameter mains should be

replaced first based on eight characteristics which affect main replacement needs, including the number of leaks, fire flow, main size, age and material, water quality, and number of customers connected to the main segment. [Id., p. 11.] IAWC discussed the model with the Pekin officials, including the Mayor, City Manager, Public Works Director and Assistant City Engineer. They provided input, and fully supported use of the model. [Id.] As a result of the small main replacement program, IAWC has catalogued all of the small diameter mains in the Pekin District system, analyzed the impact each small main segment has on the provision of water, and scheduled those mains for replacement according to need. [Id.] Based on the results of the small main analyses, IAWC has implemented a plan to replace 100% of all water mains 3 inches in diameter or less (or 75% of the mains 4 inches or less) in the Pekin system within 30 years. This represents a replacement rate of 5,000 feet annually, which is triple the replacement rate of the last 20 years. [Id., p. 12.] The estimated cost for this replacement program is approximately \$300,000 per year. [Id.]

For these reasons, Pekin's claim that IAWC has not aggressively dealt with the issue of small mains in the Pekin system is simply not true. Mr. Hierstein admitted on cross-examination that the 170-year figure he cited repeatedly in his sworn affidavit and his testimony as the amount of time it would take IAWC to replace Pekin's small mains is simply incorrect, and that he made no effort to obtain the correct estimation of length of time. [Tr. 206-09.] In comparison to IAWC's thorough analysis of the small mains, Pekin has performed no analysis whatsoever. The City fails to explain how it would approach the small main problem differently from the method IAWC developed, which was specifically approved and accepted by the City's officials, other than to speculate

that the City would divert some funds from other “less essential” improvements and use those to replace small mains instead. [Pekin Ex. 1.0, p. 13.] Of course, the City has performed no study or analysis of system needs, and has no basis whatsoever to determine which needs are “less essential” than small main replacement. The only need the City specifically identifies as “less essential,” again without the benefit of study, is replacement of meters. [Pekin Ex. 1.0, p. 22.]

Because the City has not studied the water system needs or operations, it has no basis to conclude that IAWC’s meter replacement program should be changed. In this regard, it should be noted that IAWC currently replaces and calibrates older meters as required by Commission rules designed to ensure the accuracy of customer bills, and Staff witness Johnson specifically found that approach to be in the public interest. [IAWC Ex. 3.0, p. 22; ICC Staff Ex. 1.0, pp. 9-10.] As Staff witness Johnson found, while the City has stated it will discontinue a portion of meter replacements, the City does not identify precisely which meters it will not replace, or what standards it would implement in place of those established by Commission rules. [IAWC Ex. 3.0R, pp. 8-9.] The only support the City offers to show that its unspecified, meter replacement plan would serve the public interest better than the schedule dictated by Commission rules is Mr. Hierstein’s assurance that the City will not be “unfair” to customers. [Id.] Mr. Hierstein’s unsupported personal assurance, however, does not satisfy the City’s burden to show that City ownership will better serve the public interest.

In addition to the exhaustive analysis IAWC conducted in 2002 of the impact of the small diameter mains in the Pekin system as part of its comprehensive planning process, IAWC also performed a comprehensive assessment, using a computerized

hydraulic model, of the entire Pekin distribution system. This assessment included an analysis of available fire flows throughout the system. [IAWC Ex. 3.0, pp. 16-17.]

IAWC's investigation indicated that, because the Pekin District system is an integrated system, meaning there is no one area with a mass concentration of small diameter water mains, there are no areas in which water pressure or rate of flow is inadequate due to small diameter water mains. [Id., p. 20.]

In the last rating by the Insurance Services Organization ("ISO") in 1993, Pekin's fire protection received a Class 4 rating (Classes range from 1-10 with 1 the highest), with the water system achieving 62% of the maximum credit, while the fire department received only 59% of the maximum credit. [Id., p. 21.] Since that time, IAWC has tripled its already aggressive rate for replacement of small mains, and as shown by a 2002 IAWC survey, has increased fire flows for the ISO sample hydrants anywhere from 14% to 410%. [Id., p. 21.] IAWC's analysis shows that the Pekin District currently has very few areas with fire flows less than the 500 gpm recommended by ISO, almost all of which will be eliminated with capital improvements for the Sunset Hills area, which are currently underway (for 2004 completion). [Id., pp. 22-23.] IAWC's comprehensive analysis shows that the City's characterization of the system as having "dangerous mains" is, like the City's criticisms of IAWC's small main replacement, unfounded and baseless.

**b. The Evidence Clearly Demonstrates that the City's Criticisms of IAWC's Fire Protection Service Have No Basis In Fact.**

Through the testimony of Fire Chief Janssen, the City has asserted several criticisms of IAWC's involvement in fire protection within the City. The City's data

responses and Fire Chief Janssen's testimony on cross-examination, together with evidence presented by IAWC, show that the City's criticisms are groundless. Even if the City's criticisms were legitimate (which they are not), the City does not identify, much less prove, that it would take any concrete steps that would improve fire protection under City ownership. Instead, the City is asking the Commission to simply assume that things would, for some reason, be better if the City were authorized to take over the water system.

Fire Chief Janssen criticized IAWC's performance in the following areas:

(1) maintenance and replacement of fire hydrants; (2) painting of fire hydrants; (3) main size; and (4) handling of the alleged problem of gravel in the mains. [Pekin Ex. 3.0, pp. 2, 6.] None of Fire Chief Janssen's criticisms are supported by the facts.

Mr. Janssen claims that IAWC fails to maintain operable hydrants. [Id., p. 2.] The only evidence Mr. Janssen offered in support of this allegation was a reference to a January 5, 2002 fire where he claims the hydrant was inoperable. [Id.] Mr. Janssen states IAWC did not respond promptly to the fire department notification of the inoperable hydrant, and then did not repair the hydrant for over a month. [Id.] In fact, the hydrant had recently been inspected a few months before the fire and found in good working order, and was frozen, not broken, on the day of the fire. [IAWC Ex. 4.0, pp. 24-25.] IAWC personnel responded to the call from the fire department, thawed the hydrant, and restored it to working order by the Monday following the fire on Friday. [Id.] In rebuttal testimony, Mr. Janssen claimed he did not know the hydrant was repaired, because IAWC reports repairs to the Tazewell-Pekin Consolidated Communications Center ("TPCCC"), not directly to the fire department. [Pekin Ex. 11.0,

p. 2.] Of course, Mr. Janssen failed to mention that IAWC reports to TPCCC because the fire department specifically requested that it do so. [IAWC Ex. 4.0R, p. 6.]

Mr. Janssen's criticism of IAWC's maintenance of fire hydrants is entirely baseless. IAWC conducts annual inspections of each hydrant in the Pekin system, and maintains an aggressive hydrant replacement program to promptly replace outdated or broken hydrants. [IAWC Ex. 4.0, pp. 6-7.] IAWC consults with the fire department to create its list of hydrants that need to be replaced. [Id.] In 2002, IAWC replaced more than 30 hydrants in locations approved by the fire department. [Id.] The City admits that IAWC maintains regular coordination with the fire department on hydrant replacement, and Mr. Janssen specifically acknowledged that IAWC had never refused the City's request for repair or replacement of a hydrant. [IAWC Ex. 4.0, pp. 6-7; Tr. 421-22.]

Mr. Janssen also claimed that fire protection within the City is hampered by the inadequately sized mains. Again, the only evidence Mr. Janssen offered to support that allegation, other than his recollection of undocumented problems at two fires that supposedly occurred "some years ago" (sometime during the 1980's), was his assertion that the fire department's failure to contain a March 3, 2002 fire at Jim's Automotive was caused by inadequate flow from the hydrants used to fight the fire, which Chief Janssen contends was a direct result of smaller sized mains feeding the hydrants. [Pekin Ex. 3.0, p. 4.] Mr. Janssen admitted the fire department had no records of the amount of water pressure available for fighting the Jim's Automotive fire, and that he had no evidence to support his contention. [Id., pp. 28-29.] Furthermore, Mr. Janssen's assertion that the hydrants used to fight the fire were connected to small diameter

mains is incorrect. The two hydrants used to fight the fire, both of which were less than 3 years old, are served by 6 inch mains. [Id., pp. 27-28.]

To resolve this matter, IAWC performed a hydraulic analysis which shows that the hydrants used to fight the Jim's Automotive fire actually produced between 1000 and 1600 gallons per minute at 20 psi, well above national fire protection standards. [IAWC 4.0, pp. 28-29.] Mr. Janssen himself estimated that the hydrants produced at least 2900 gpm during the fire. [Tr. 435.] Mr. Janssen also admitted that he never contacted IAWC to request that larger mains be installed near the location of the fire. [Id., 433.] In discussing the Jim's Automotive fire, Mr. Janssen also criticized IAWC for not responding quicker to calls during the fire, but later admitted he had been provided with emergency contact numbers for IAWC personnel, but did not have the numbers with him during the fire and so had not called them. [Pekin Ex. 3.0, p. 5; Tr. 422.] The City's criticisms of Illinois-American with regard to the fire are wholly without merit.

Mr. Janssen also claims that, despite notice and complaint, IAWC has failed to respond to an ongoing problem of gravel in the mains that has existed since the 1980s. [Pekin Ex. 3.0, p. 6.] However, when questioned further about this alleged problem, Mr. Janssen admitted the City had no records or documentation of any such problem; that in fact, there was no evidence that IAWC had been made aware of the perceived problem; and that he personally had made no efforts to complain, either in writing or verbally, about the problem to anyone at IAWC or the Commission. [Tr. 419-21.] As noted earlier, IAWC conducts a thorough inspection of each hydrant in the Pekin system annually. IAWC also conducts regular inspections of its well pumps. If there were a problem with gravel in the mains for the past decade, it would have been evident in

these inspections. [IAWC Ex. 4.0R, pp. 4-5.] If it is such a problem, why is there no written record of it? Why hasn't Mr. Janssen picked up the phone to notify someone at IAWC or the Commission? The reason is simple. Like the other criticisms Mr. Janssen has raised, the alleged problem with gravel in the mains is either something that was created solely for the purposes of testimony in this proceeding or is based on some undocumented, isolated incident long past.

The final criticism Mr. Janssen raises provides perhaps the clearest indication of his credibility in this proceeding. In direct testimony, Mr. Janssen criticized IAWC for painting the fire hydrant bonnets according to main size, as opposed to flow, going so far as to state that he had "no idea why Illinois-American has chosen to essentially ignore NFPA requirements, and go their own way." [Pekin Ex. 3.0, p. 4.] In fact, as Mr. Janssen later admitted, IAWC painted the hydrants according to main size because that is precisely what the fire department requested. [IAWC Ex. 4.0, pp. 8-9.] IAWC provided the fire department with a map of the hydrants, and the fire department color coded the map according to the colors each hydrant should be painted. [Id.]

Randy West, IAWC's operations supervisor in Pekin, personally called both Mr. Janssen and the fireman who color coded the map to verify that the hydrants had been color coded according to main size. [IAWC Ex. 4.0, pp. 8-9.] IAWC completed the painting according to the map, and was never notified by anyone from the City that it had been done incorrectly. [Id.] On cross-examination, Mr. Janssen admitted that IAWC followed the explicit instructions of the fire department, which he acknowledged color coded the hydrants according to main size. [Tr. 423-26.] He attempted to explain his criticism of IAWC by claiming the fire department made the decision to code by main



size before he was Chief, but admitted that it never occurred to him to change the policy. [Tr. 423-26.]

**c. The Evidence of IAWC's Cooperation With the City Is Indisputable.**

Mr. Hierstein criticizes IAWC's alleged lack of cooperation in coordinating planning and infrastructure maintenance. [Pekin Ex. 1, pp. 6-7, 13.] For example, he contends that the City resurfaces a road and within weeks IAWC digs it up to perform maintenance on the water mains. Mr. Hierstein further alleges that the City has repeatedly complained to Illinois-American about this "absurd situation." [*Id.*, p.13.]

Documents created by the City prior to the filing of its Petition, however, belie Mr. Hierstein's criticisms. For example, in the City's 2001 Comprehensive Plan Update, the City describes its coordination with utilities, including Illinois-American, as "excellent." [IAWC Ex. 4.11.] Moreover, in a February, 2001 letter to IAWC President, Terry Gloriod, Mr. Hierstein himself stated: "I genuinely appreciate the cooperation that Pekin is receiving from you and your Peoria and Pekin management in a variety of issues." [IAWC Ex. 5.2.] And, even after the filing of the Petition, Mr. Hierstein acknowledged, in response to a data request, that coordination between the Company and the City has been greatly improved over the past years. [IAWC Ex. 5.3.]

The groundless nature of Mr. Hierstein's criticism of Illinois-American's cooperation with the City is further confirmed by the unrefuted examples of cooperation presented by IAWC. For instance, Illinois-American along with the other utilities participates in monthly utility coordination meetings conducted by the City. [IAWC Ex. 4.00, p. 9.] At these meetings, information regarding the City's and the utilities' ongoing and planned projects is exchanged. In addition, every day, the Pekin District of Illinois-

American e-mails a copy of its daily work schedule to the City engineer. [Id.] Illinois-American also prepares an annual capital improvement plan for the Pekin system, which includes water main replacements and other infrastructure improvements. [Id.] This plan is communicated to the City prior to construction so that any conflicts can be resolved. Finally, the City prepared a five-year street plan, which was provided to Illinois-American in 2001. As explained by Randy West, the Operations Superintendent for IAWC's Pekin District, IAWC makes every effort to schedule capital projects around the City's plan for street repairs. [Id.] Mr. West described two examples of Illinois-American's efforts in this regard. First, in 2002, Illinois-American had two water main replacements scheduled in areas that the City planned street pavement overlays. [Id., p. 11.] Illinois-American and the City worked together so that the water main excavations could be completed before the City's street work was done. Second, Illinois-American agreed to install water main and road crossings in conjunction with new road construction that the City has now begun on the eastern side of the City. [Id.]

In sum, the documents, data responses, and unrefuted evidence demonstrate that contrary to Mr. Hierstein's unsubstantiated criticism, IAWC's cooperation with the City in coordinating planning and infrastructure maintenance is "excellent."

**d. The City Has Not Provided Any Basis to Conclude that Its Proposal Will Serve the Public Interest Better Than Continued Safe Ownership and Operation of the System by IAWC.**

In addition to the unfounded criticisms of IAWC's service, the second prong of the City's argument that it can provide better service than IAWC is the City's assertion that the alleged problems with IAWC service would be rectified by City ownership.

[Hierstein Aff. to Pet., ¶¶ 15, 17, 19, 21-26; Pekin Ex. 1.0, pp. 12-13.] As discussed

more thoroughly below, the City has no plan whatsoever to assure that customers will be better off under municipal ownership. Clearly, IAWC has a proven record of providing outstanding service at stable rates in Pekin, has conducted a thorough and ongoing analysis of the future needs of the system, and has developed detailed and comprehensive plans to address those needs. [IAWC Ex. 3.0, pp. 5-6, 12-17.]

Conversely, the City has made no effort whatsoever to analyze the needs of the system, or to formulate a specific operating plan or capital plan. [Tr. 191-98.] The City has no specification on how it will run the water system, and cannot agree even among its own witnesses how many employees it will require. [Pekin Exs. 1.0, p. 6; 7.0, p. 6; IAWC Ex. 4.0R, pp. 2-3.] The City has no idea what types of capital projects it will undertake or forego, what its operating costs will be, or how non-residents will be treated. [IAWC Ex. 3.0, p. 24; Pekin Ex. 1.0, p. 5; Tr. 186-88.] The City claims there could be economies from mass purchasing, but cannot back up that assertion with any specific information about what these economies may involve or how much they may be. [IAWC Ex. 2.0R, p. 7.]

The City claims it has demonstrated that it has the expertise to run the water system based on its “exemplary” experience with wastewater operations, which, as discussed above, is certainly not exemplary. Not only has Pekin utterly failed to meet its burden of proving that the service will improve under City ownership, the evidence presented demonstrates that service will likely decline under City ownership. As stated by IAWC witness Stack, “continued ownership and operation of the Pekin District system by Illinois-American, with oversight by the Commission, is clearly preferable to condemnation by Pekin from a public interest standpoint.” [IAWC Ex. 11.0R, p.7.]

Through its comprehensive planning process, IAWC regularly conducts detailed analyses of all aspects of the water system, which include the following:

(1) development of customer account and demand projections for a 15-year planning period; (2) examination of the adequacy of existing sources of supply and recommended improvements; (3) assessment of treatment facilities in light of existing and proposed water quality regulations, treatment and safety standards; and (4) analysis of water system transmission, distribution and storage needs. [IAWC Ex. 3.0, pp. 5-6, 12-17] IAWC then uses the results of these analyses to formulate a comprehensive capital and operations plan which is reviewed annually and updated every 5-7 years. [IAWC Ex. 3.0, pp. 6-7.]

In contrast to IAWC's detailed analysis and planning process, the City's proposal is almost entirely undefined. Pekin has no specific capital or operating plan. The City claims it will use IAWC's plan as a starting point, but then make unspecified changes. [Pekin Ex. 7.0, p. 4; IAWC Ex. 1.0R, pp. 2-3.] The City claims it will initially adopt ICC rules governing operations and customer service, while at the same time acknowledging that it intends to: (1) condition extensions of service on annexation; (2) disregard the Commission's rule and policies regarding subsidization of main extensions in the rates of existing customers; and (3) replace the Commission-prescribed meter replacement program with another completely unspecified schedule for meter replacement. [IAWC Exs. 2.0, p. 15; 3.0R, pp. 8-9; Pekin Ex. 1.0, p. 22.]

The City also states that it will hire a contract operator to run both the wastewater and water system, but not only does the City have no idea who that operator will be, the City has made no effort to identify the minimum performance standards the operator

would need to meet, specify the responsibilities the contract operator would have, or describe the split and/or overlap of authority to make decisions between the City and the proposed contract operator. [IAWC Ex. 1.0, pp. 22-23.] The City has not determined who ultimately would be responsible for meeting drinking water requirements, paying fines, obtaining IEPA permits or filing regulatory compliance reports. [Id.] The City readily admits that its relationship with the current contract operator for the wastewater system, United Water, has encountered significant difficulties, and as discussed above, the contract operator approach has not adequately addressed system requirements for the wastewater system. [Tr. 235-365; IAWC Ex. 1.0, p. 22.] Based on the City's utter lack of planning, the difficulties encountered by both Pekin and other cities, such as Atlanta, with contract operators, as well as the complex nature of the specification and bid process, there is absolutely no basis to know how retention of a contract operator, if one is hired, might affect operation of the water system under City ownership. Based on his investigation, Staff witness Smith concluded that there was "no plan or evidence supporting" the assumption that a contract operator would be hired at all. [Staff Ex. 5.00, p. 4.]

**4. The Public Interest Will Not Be Better Served by City Ownership Because, Unlike Illinois-American, the City Would Require Current Customers to Subsidize Development and New Customers to Annex.**

An additional reason the City cites in support of its claim that the public interest will be better served through City ownership is the assertion that the acquisition will allow the City to better manage City growth and development. [Pekin Ex. 1.0, p. 9.] Mr. Hierstein alleges that Illinois-American's lack of cooperation hampered both residential and commercial development. [Id.] Specifically, Mr. Hierstein states that "[i]t is notable

that Illinois-American was the only utility who failed to participate in creating a package to help convince Hanna Steel to locate in Pekin.” [Id.] When Mr. Hierstein was asked to elaborate on alleged problems with Illinois-American relating to development in data requests, however, he was unable to provide specifics or documentary support, instead solely responding that “[i]t took more than an extra month to get water service for Hanna Steel. Unnecessary legal administrative expenses were incurred in the process.”

[IAWC Ex. 4.00, p. 14.]

As revealed by Mr. Hierstein’s testimony, the City’s criticism relates to the fact that Illinois-American was required under the Commission’s Main Extension Deposit Rules (“Rules”), to seek a variance authorizing the agreed arrangement with the City for the Hanna Steel project. In extending water mains, Illinois-American applies the Rules, which ensure that existing customers are not required to unfairly subsidize a main extension for a new applicant by paying water rates that reflect a disproportionate cost of constructing the extension. [IAWC Exs. 11.0R, p. 10-12; 2.0 pp. 15-17.] The Rules are incorporated into the Company’s tariffs filed with the Commission. [IAWC Exs. 2.0, p. 15; Ex. 2.5.] Any variance to the Rules must be approved by the Commission. [IAWC Ex. 2.0, p. 15.] Under the Rules, applicants requesting that water mains be extended to serve their property are responsible for providing a deposit to fund the extensions, subject to certain credit and refund requirements set forth in the Rules. [Id.] By requiring a developer to fund the costs associated with an extension of service, the developer must commit to the project. [IAWC Ex. 2.0, p. 17.] The Rules do not discriminate against any applicant for an extension, and the deposit requirements for main extensions do not differ based on the location of a development relative to the City

limits or the willingness of the developer to annex to the City. [IAWC Exs. 2.0, pp. 15-17; 11.0R, p. 13.] Under the Rules, the revenue generated by existing customers is not used to subsidize an extension of service. [Id.]

In appropriate circumstances, Illinois-American can request a variance from the Commission to cooperate with developers and the City in supporting development. An example would be the very Hanna Steel development about which Mr. Hierstein complains. [IAWC Ex. 4.0, pp. 12-13, 15.] In 1998, the City obtained a grant for the construction of a water main extension to the Hanna Steel property, but the grant required the City to own the extension for five years. [Id.] Although such ownership by the City is contrary to the Rules, IAWC sought and expeditiously obtained a variance from the Commission to allow the City to maintain ownership of the main extension for the five year period required by the grant. [Id.; IAWC Ex. 11.0R, p. 10.] (The “legal administrative expense” referenced above that Mr. Hierstein characterizes as “unnecessary” was incurred in obtaining the variance.) In this manner, IAWC was able to cooperate with the City and aid in development without placing the burden for the development on current customers through increased rates. [IAWC Ex. 4.0, p. 13.] This is not an example of a problem; it is an example of a solution.

The protections afforded customers under the Rules would be lost if the City were to acquire the system. [IAWC Ex. 11.0R, p. 9.] Although the City has said that, should it acquire the system, it plans to “initially” adopt the policies in force under ICC Rules, it also admits that it will “review” and may modify those policies. [Tr. 104-105; Hierstein Aff. to Pet., ¶ 17.] Staff witness Johnson testified that he is concerned that the City may adopt policies that discriminate against non-resident customers. [Tr. 102.]

And, the City has affirmatively stated that it “may condition access and extensions of the existing [water] system to new customers upon annexation.” [Tr. 105-106; Hierstein Aff. to Pet., ¶ 19.] The City’s statements thus demonstrate that it intends to discriminate against non-residents by conditioning extensions of service on annexation, and will offer to assist applicants of its choosing in funding of main extension, thus requiring the existing customers to subsidize service to the new customers. [IAWC Ex. 2.0, p. 17.]

The only development “advantages” that Pekin could arguably gain by the proposed acquisition are the ability to force certain non-residents to annex in order to receive water service, and/or the ability to subsidize main extensions to favored developers, thereby forcing existing customers to subsidize those developers. These “advantages” that Pekin seeks are contrary to the Rules, and not in the public interest. See, e.g., Illinois-American Water Company, Docket No. 96-0007, pp. 10-11 (June 26, 1996) (authorizing IAWC to provide water service to a new subdivision over the objection of a neighboring city that wanted to condition water service on annexation in accordance with its alleged right to “govern the city’s growth”).

With respect to cooperation regarding development projects, the evidence demonstrates that current coordination between the IAWC and both the City and developers is excellent. [IAWC Exs. 4.0, p. 10; 11.0R, p. 8.] Contrary to the City’s assertions, the evidence shows that IAWC actively supports economic development in Pekin and the surrounding areas, within the terms of the Rules, and coordinates with both the City and developers to do so. [IAWC Ex. 4.0, pp. 12-13, 15.] Based on the Rules, IAWC has established a standardized Developer Installed Water Main Packet that guides the developer through the construction process. [Id., p. 15.] IAWC has



provided the Developer Installed Water Main Packet to many of the consulting engineering firms and developers within the service area, to ensure the development community understands this process. In addition, IAWC has on staff an Operations Supervisor-New Business whose primary responsibility is to monitor the installation of water mains in the development process. [Id.]

**5. The City's Claim that City Ownership Will Provide Additional Jobs in Pekin Does Not Support Its Argument that the Public Interest Will Be Better Served Under City Ownership.**

The City claims that its acquisition will provide additional jobs in Pekin. Mr. Hierstein cited additional jobs as one reason supporting condemnation in both his direct testimony and the affidavit he filed in support of the City's petition. [Pekin Ex. 1.0, p. 6; Hierstein Aff. to Pet., p. 2.] However, Mr. Hierstein later contradicted himself when he stated, in rebuttal testimony, that the number of water system employees would decrease under City ownership. [Pekin Ex. 7.0, p. 6.] The City has also suggested that IAWC employees will be given the opportunity to continue employment under City ownership. [Pekin Ex. 6.0, p. 4.] All of the statements by Mr. Kief and Mr. Hierstein, however, are entirely unsubstantiated, as the City has not developed any detailed plan for operation of the water system, much less provided an organizational chart showing the staffing assignments, levels, or division of responsibility between the anticipated contract operator and the City. [IAWC Ex. 4.0R, pp. 2-3.] As Staff witness Smith points out, the City actually has no idea how many employees would be needed to operate the water system under City ownership. [Staff Ex. 5.00, p. 4.] Furthermore, Mr. Hierstein's statements cannot be reconciled. He has stated inexplicably both that the condemnation will provide additional jobs and that the number of water system

employees will decrease. [Pekin Exs. 1.0, p. 6; 7.0, p. 6.] It is actually impossible to tell precisely what the City's intentions are because the City has made no effort to come up with any type of operational plan. The bottom line is that the City's assertion that condemnation will provide additional jobs in Pekin is entirely meaningless, and provides no support whatsoever to the City's claim that the public interest will be better served under City ownership.

**6. The City's Claim that the City's Condemnation Plan Has the Overwhelming Support of Its Citizens Is Without Merit.**

An additional reason cited by the City in support of condemnation is that the City has the "overwhelming support of its citizens in moving forward with the acquisition of the system." [Hierstein Aff. to Pet., ¶ 31.] The City's claim is without merit, and does not provide support to the City's argument that the public interest will be better served with City ownership of the water system. The City's claim of "overwhelming public support" is based on the results of a 2002 referendum initiated by the City shortly after IAWC filed for Commission approval of a sale of stock of its parent company, American, to RWE. [Hierstein Aff. to Pet., ¶¶ 27-31; Pekin Ex. 1.0, p. 8.] However, when the circumstances surrounding the referendum are examined closely, it is clear that the City's claim of overwhelming support is without merit. Furthermore, the circumstances and events surrounding the referendum cast serious doubts on the sincerity of the City's representations in this proceeding.

Shortly after the City's Water Study Task Force Report was issued in 1999 recommending, with some qualifications, that the City pursue acquisition of the Pekin District system, IAWC initiated an advisory referendum to ensure the City did not proceed with a forced acquisition of IAWC without first obtaining direct voter input.

[IAWC Ex. 5.0, p. 9.] The 2000 referendum asked voters the following straight-forward question:

Shall the City of Pekin, Illinois, purchase the facilities and business of Illinois-American Water Company which serve the Pekin area?

[IAWC Ex. 5.0, p. 10; Ex. 5.5.] Despite a vigorous campaign waged by the City in support of acquisition, 54% of those voting in the referendum voted against acquisition of the water system. [Id.]

In response to IAWC's 2001 annual survey, then-Mayor Tebben, City Manager Hierstein, and Fire Chief Janssen all indicated that they were satisfied with IAWC and the service it provided to the Pekin District. [IAWC Ex. 5.0, pp. 3, 12-13; Exs. 5.1, 5.7, 5.8.] Mr. Janssen responded to every question asked with "satisfied," and Mayor Tebben and Mr. Hierstein both indicated they were satisfied with IAWC's service, responsiveness, reliability, accountability and coordination with the City. [Id.] These survey responses demonstrate that as of 2001, the City was very satisfied with the service provided by IAWC.

In March 2002, triggered not by service issues or complaints (indeed, there have never been any complaints submitted by the City to the Commission), but by announcement of the sale of IAWC's parent company stock to RWE, the City again placed the acquisition issue before the voters in an advisory referendum. [Pekin Ex. 1.0, p. 8.] As noted above, in Docket 01-0832, the Commission approved the RWE transaction and found that "customers will benefit". [IAWC Ex. 1.0 p. 5]. However, rather than placing a straightforward referendum on the ballot (comparable to the 2000 referendum), the City worded the referendum as follows: